IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 20 OF 2004.

Shri Suraj @ Balan
Chodankar, r/o H. No.
193, Ward No. 2,
Headland, Sada,
Vasco da Gama. ... Petitioner.

Versus

1. State through Public
   Prosecutor.
2. The Chief Secretary,
   Secretariat, Panaji. ... Respondents.

Mr. S.G. Bhobe, Advocate for the Petitioner.

Mr. S.N. Sardessai, Public Prosecutor for the
Respondents.

Coram : P.V. HARDAS, J.

Date : 26th March 2004.

ORAL JUDGMENT.

Rule. By consent of the learned counsel for the parties, this Writ Petition is taken up for final hearing at the stage of admission.

2. The petitioner in this petition impugns the Order of the Chief Secretary/Appellate Authority under the Goa Maintenance of Public Order and Safety Act, 1988, dated 19th March 2004, declining to grant stay of the Order impugned in the Appeal, namely, the externment Order, dated 23rd February 2004, passed by the District Magistrate, South Goa, Margao. The learned Appellate Authority declined the request of the petitioner for stay holding that he found that there was some material

showing that there were reasonable grounds for believing that the appellant was engaged in the commission of offences involving force or violence. He, accordingly, dismissed the stay application.

3. Mr. Bhobe, the learned counsel appearing on behalf of the petitioner, has relied on the Judgment of the Division Bench of this Court in **Shamkumar Arjun Dalvi v. State of Maharashtra and another**, 1988 Mh.L.J. 95. In the said authority, the Division Bench in paragraph 3 has held as under:-

> 3. Now, when an appeal is provided by the statute and the same is filed, it is then, in a matter of externment, but just and fair that pending the appeal, the externment is stayed. Refusal in that behalf may, in a given case, as well render the appeal itself infructuous. We are informed that stay is not granted as a matter of policy. If that is so, it is rather unfortunate. It tends to defeat justice. The need for externment should be balanced with the requirement to be just, fair and reasonable to the externee. If a life convict can be released on bail or preventive detenu on parole or one accused of serious economic offence granted even anticipatory bail, what is so extraordinary qua an externee that in no case he should be given stay? Besides, discretion vested in an appellate authority must be exercised not blindly as a matter of policy but rationally depending upon the facts and facts of each case. In all the circumstances, we are inclined to grant stay pending the appeal with direction to decide the same

expeditiously."

4. Mr. Sardessai, the learned counsel appearing on behalf of the respondents, has urged that the ground on which the Appellate Authority declined to grant stay to the appellant was also that the hearing of the appeal was expedited and it was fixed for hearing on 14th April 2004 and, therefore, according to him, in such circumstances, the present appeal deserves to be dismissed.

5. I have given my anxious consideration to the rival submissions of the learned counsel. The petitioner has stated in this petition that the petitioner is employed and after passing of the impugned Order, the petitioner immediately applied for 15 days leave, which expires on 18th March 2004 and, in the event the petitioner does not resume his duties, the petitioner will have to face the likelihood of losing his job. In the circumstances, according to me, despite the fact that the appeal was fixed for hearing on 14th April 2004, the Appellate Authority should have granted stay of the impugned Order. Undisputedly, by virtue of the proviso to Sub-Section (3) of Section 7, the Appellate Authority has been vested with the powers of staying the impugned Order pending the decision of the appeal. In the present case, according to me, the Appellate Authority has not properly exercised the discretion and this is a fit case where the impugned

Order ought to have been stayed.

6. In the result, therefore, the Criminal Writ Petition is allowed. Rule is made absolute in terms of prayer Clause (a). The Order of the District Magistrate, South Goa, Margao, dated 23rd February 2004 is stayed till the decision of the appeal by the Appellate Authority. Copy duly authenticated by the Court Sheristerdar be given to the parties.

(P.V. HARDAS)
JUDGE.

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